

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT
3

4 SUMMARY ORDER
5

6 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER
7 AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY
8 OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY
9 OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED
10 CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES
11 JUDICATA.
12

13 At a stated term of the United States Court of Appeals for
14 the Second Circuit, held at the Thurgood Marshall United States
15 Courthouse, at Foley Square, in the City of New York, on the 6th
16 day of October, two thousand and four.
17

18 PRESENT:
19

20 Hon. John M. Walker, Jr.,
21 Chief Judge,
22 Hon. Chester J. Straub,
23 Circuit Judge,
24 Hon. Jed S. Rakoff,
25 District Judge.*
26

27 -----X
28 ELENA ENDRIULIENE,
29 Petitioner,
30

31 v.

02-4271

32
33 JOHN ASHCROFT, UNITED STATES ATTORNEY GENERAL
34 Respondent.
35 -----X
36

37 APPEARING FOR PETITIONER: ROBERT TSCHUDIN LUCHEME,
38 Glastonbury, CT
39

40 APPEARING FOR RESPONDENT: DAVID S. RUBENSTEIN, Assistant
41 United States Attorney (David N.
42 Kelley, United States Attorney,

* The Honorable Jed S. Rakoff, of the United States District Court for the Southern District of New York, sitting by designation.

Southern District of New York, Kathy
S. Marks, Assistant United States
Attorney, on the brief), New York, NY

Petition for review from the Board of Immigration Appeals.

**UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND
DECREED** that the order of the Board of Immigration Appeals be and
it hereby is **AFFIRMED**.

Petitioner Elena Endriuliene seeks review of an order of the
Board of Immigration Appeals ("BIA") denying her application for
asylum and withholding of removal, pursuant to, respectively,
former §§ 208 and 243(h) of the Immigration and Nationality Act
("INA"), 8 U.S.C. §§ 1158(a) (amended 1996), 1253(h) (repealed
1996).*

The BIA affirmed, without opinion, the Immigration Judge's
("IJ") decision that Endriuliene did not offer credible
testimonial or sufficient documentary evidence in support of her
application, and designated the IJ's decision as the final agency
determination. We affirm.

Where the BIA has adopted the reasoning of the IJ or
affirmed without opinion, we may review the IJ opinion directly.
See Secaida-Rosales v. INS, 331 F.3d 297, 305 (2d Cir. 2003). We
review the IJ's factual findings regarding eligibility for asylum
and withholding of deportation under a "substantial evidence"
standard, see id. at 306-07, upholding them where "supported by
reasonable, substantial, and probative evidence on the record
considered as a whole," Diallo v. INS, 232 F.3d 279, 287 (2d Cir.
2000) (quoting 8 U.S.C. § 1105a(a)(4) (repealed 1996)). Pursuant
to this standard, where a petitioner's challenge is predicated on
the sufficiency of the IJ's factual findings, we will "reverse
only if no reasonable fact-finder could have failed to find the
past persecution or fear of future persecution necessary to
sustain the petitioner's burden." Id. We accord "particular
deference" to the IJ's determinations surrounding credibility.
Chen v. INS, 344 F.3d 272, 275 (2d Cir. 2003) (quoting Montero v.

* As Endriuliene's deportation proceedings began before
April 1, 1997, and the order of deportation in this case became
final after October 30, 1996, we apply the transitional
provisions of the Illegal Immigration Reform and Immigrant
Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, §
309, 110 Stat. 3009-625. Pursuant to these provisions,
Endriuliene's application for asylum and withholding of
deportation is governed by the INA as it existed prior to
IIRIRA's 1996 amendments. See Henderson v. INS, 157 F.3d 106,
117 (2d Cir. 1998).

1 INS, 124 F.3d 381, 386 (2d Cir. 1997). Having carefully reviewed
2 the record in this case, we conclude that the IJ articulated
3 sufficient reasons for questioning the credibility of
4 Endriulienė's testimony, and that his decision was supported by
5 substantial evidence. We therefore affirm the IJ's denial of
6 asylum.

7 Endriulienė, who seeks to avoid deportation to Lithuania,
8 claims that she experienced past persecution and has a well
9 founded fear of future persecution on account of her Russian
10 nationality. She asserts that before she arrived in the United
11 States from Lithuania in late 1993 she suffered harassment and
12 intimidation at the hands of a Lithuanian nationalist group, the
13 Lithuanian police, and various individuals motivated by anti-
14 Russian animus.

15 In denying Endriulienė's application, the IJ pointed to,
16 inter alia, several inconsistencies in her asylum application and
17 testimony before the court. Among these were discrepancies in
18 the dates and circumstances surrounding key events, including
19 various alleged interrogations upon which her asylum claim was
20 based, and conflicting accounts regarding the date of a beating
21 and resulting miscarriage she claims to have sustained in 1993.
22 Endriulienė did not resolve these discrepancies by providing
23 corroborating documentary evidence regarding events she described
24 during her testimony. The IJ considered her explanations for the
25 lack of supporting documentation and found them unpersuasive.
26 Moreover, neither the State Department Human Rights Report on
27 Lithuania, nor any other background information cited by
28 Endriulienė, describes anti-Russian persecution akin to that
29 which she claims.

30 We have carefully considered Endriulienė's remaining
31 arguments and find them to be without merit. Specifically, we
32 reject summarily Endriulienė's challenge to the BIA's refusal to
33 withhold deportation, which required that Endriulienė meet an
34 even higher burden of proof than did her asylum claim. See
35 Ramsameachire v. Ashcroft, 357 F.3d 169, 178 (2d Cir. 2004).

36 For the reasons set forth above, the decision of the Board
37 of Immigration Appeals is hereby **AFFIRMED** and the petition for
38 review is denied.

39
40 FOR THE COURT:

41 Roseann B. MacKechnie, Clerk

42
43 By: _____

44 Lucille Carr, Deputy Clerk